



***CITY OF MANCHESTER, NH  
ZONING BOARD OF ADJUSTMENT  
BY-LAWS AND RULES FOR THE  
TRANSACTION OF BUSINESS***

***ARTICLE I - AUTHORITY***

The Board of Adjustment of Manchester, New Hampshire, of Hillsborough County, shall have such rights, powers and duties as are conferred or imposed upon it by the Board of Mayor and Aldermen in accordance with Chapter 676:1, New Hampshire Revised Statutes Annotated and the Zoning Ordinance of the City of Manchester and any amendment(s) thereto.

***ARTICLE II - APPOINTMENT AND TERMS OF MEMBERS***

The Manchester Zoning Board of Adjustment consists of 5 members who are appointed by the Mayor and confirmed by the Board of Mayor and Aldermen for a term of 3 years consistent with state law, RSA 673:5, starting every March 1st. of each year. Each member must be a resident of the municipality.

Members of boards or commissions shall serve for (3) year terms and shall be limited to two (2) consecutive full terms on the same board. (A full term shall be considered a term of two (2) years or more.) No member shall take office for a term, having served two (2) consecutive terms, unless two (2) years shall have elapsed since such member completed the second consecutive term. (City Charter Section 3.14 (d), adopted 7/01/97)

No member shall serve as a holdover for more than 90 days after expiration of any term. All members shall continue to serve until re-appointed or a successor has been appointed under the provisions of the city charter. At the end of such period, the office shall become vacant unless the mayor re-appoints a replacement. The mayor shall submit a nomination to the aldermen for confirmation. Such confirmation vote shall require the votes of nine aldermen. If the nominee is not confirmed, the mayor shall be entitled to nominate a new candidate within 90 days. (City Charter Section 3.14 (g)).

One member of the Planning Board (regular or alternate) may serve on the Board of Adjustment. RSA 673:7

Alternate Members may be appointed by the Mayor and confirmed by the Board of Mayor and Aldermen in a manner consistent with State Statute and City Ordinance.

Whenever a regular member of the Board of Adjustment is absent or disqualifies himself from consideration and action on a matter before the Board, the Chairman shall designate an Alternate, if one is present, who has been appointed in accordance with RSA 673:6, to act in the member's place. The alternate should be clearly noted for the record.

If any board member who fails to attend one-third of the regularly scheduled meetings of the board during a calendar year or misses four consecutive meetings of the board, the record of attendance shall be reported to the mayor and aldermen who, upon finding of no reasonable explanation of such absences, shall declare the office vacant (City Charter 3.14 (f)).

After finding by the board of aldermen that there is cause to remove a member of a board of the city, the member may be removed by a vote of nine aldermen voting on a motion stating specific reasons (City Charter 3.14 (e)).

### ***ARTICLE III - OFFICERS AND STAFF***

A Chairperson shall be elected annually by a majority vote of the Board of Adjustment in the month of March, or at the Board's discretion, for a term of one year (RSA 673:8). He/She is eligible for re-election. The Chairperson shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

A Vice-Chairman shall be elected annually by a majority vote of the Board in the month of March, or at the Board's discretion, for a term of one year. He/She is eligible for re-election. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters, which come before the Board during the absence of the Chairperson.

A Clerk shall be elected annually by a majority vote of the Board in the month of March, or at the Board's discretion, for a term of one year. He/She is eligible for re-election. The Clerk shall supervise the ZBA Department in transactions and decisions of the Board and perform other duties as so directed. Duties of the Clerk may be designated to a Secretary at the Board's discretion.

### ***ARTICLE IV - DISQUALIFICATION***

Any person who has a direct personal or financial interest in an appeal should disqualify himself/herself and be replaced by an Alternate Member. When a Board Member is disqualified, the Chairperson may designate an Alternate Member to fill the seat. The Alternate should be clearly noted in the records. RSA 673:14

The member disqualifying himself/herself shall absent himself/herself from the Board table during the public hearing and all deliberation on the case.

### ***ARTICLE V - QUORUM***

A quorum for all meetings of the Board shall be three members, which may include alternates sitting in place of an absent member. The concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass. RSA 674:33 III

## ***ARTICLE VI - APPLICATIONS TO THE ZBA***

The Zoning Board has the authority to act in the following categories: Variances, Special Exceptions, Administrative Appeals as it pertains to the decisions of the Building Commissioner, the Planning Board, the Heritage Commission and Equitable Waivers. No case can be acted upon without a Public Hearing. The Board strongly recommends that before making any appeal that the applicant is familiar with the Manchester, NH Zoning Ordinance and with New Hampshire Statutes (RSA) Chapters 672 to 677.

### **VARIANCES**

There are two types of variance, a use variance, which permits the use of the land that is prohibited by the Zoning Ordinance and area variances that involve matters such as setbacks, lot area, frontage, etc.

Relief granted by the Board cannot be limited to a particular individual nor can it be limited to a specific period of time. Variances stay with the property and can be used by the present and subsequent owners. Financial hardship in and of itself does not warrant the granting of a variance.

To obtain a variance, an applicant must make a persuasive showing to each item in a five-part test that:

1. No diminution in values of surrounding properties would result.
2. Granting the variance would be of benefit to the public interest.
3. Denial of the variance would result in unnecessary hardship.

"Applicants for a variance may establish unnecessary hardship by proof that: (1) a zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property; (3) the variance would not injure the public or private rights of others." (Simplex Technologies, Inc. Vs Town of Newington - 1/29/01). Amended by the ZBA 4/09/01 to reflect RSA.

4. Granting the variance, substantial justice would be done.
5. The use would not be contrary to the Spirit of the Ordinance.

The Zoning Board of Adjustment may grant a variance from the terms of the zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when

reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises provided that (a) any variance granted be in harmony with the general purpose and intent of the zoning ordinance and (b) the variance shall survive only so long as the particular person has a continuing need to use the premises. RSA 674:33 V (Effective 8/17/98). Amended by the ZBA 7/20/00.

### **SPECIAL EXCEPTIONS:**

Under state law, terms of a zoning ordinance and its self-described purposes establish the test for granting special exceptions. Special Exception is a permitted use if it meets each of the following criteria:

1. Appropriate location.
2. The use will not adversely affect the neighborhood.
3. The use will not cause undue nuisance/serious hazard to vehicles/pedestrians.
4. Structure/Operation will ensure proper operation

### **ADMINISTRATIVE APPEALS:**

Under RSA 676:5, the Zoning Board of Adjustment has the power to hear and decide on appeals from a written administrative decision involving interpretation or application of the terms of the Zoning Ordinance within 30 days\* of said decision. The appeal will be granted if the applicant can prove that the decision of the Building Commissioner was made in error. A copy of the decision appealed from must be attached to the application. \*Amended by the Board on 4/11/94.

The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from any may make such order or decision as ought to be made and to that end, shall have all the powers of the administrative official from whom the appeal is taken.

Article 13 of the Zoning Ordinance deals with impact fees. Section 13.06 provides for appeals as follows: "Any aggrieved party may appeal the provisions of this Article to the Zoning Board of Adjustment, as established in Article 14 of the Zoning Ordinance". Where the appeal is on the amount of the fee to be paid, the party shall first have exhausted its options available through the Planning Board under Section 13.09 (2). In such cases, the party shall prepare an independent fee calculation study for the new development activity, which is proposed and shall provide a copy of the action to the Planning Board. All costs incurred by the City for the review of such study shall be paid by the party." (Per Zoning Ordinance, adopted 2/07/01)

### **APPEALS OF THE PLANNING BOARD DECISION**

Under RSA 676:5 III, if, in the exercise of subdivision or site plan review, the planning

Board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation or application of the zoning ordinance, which would be appealable to the board of adjustment, if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits to the planning board, then the planning board's decision made pursuant to that delegation cannot be appealed to the board of adjustment but may be appealed to the superior court, as provided by RSA 677:15. Appeals to the ZBA must be made within 30 days of decision to which the appeal is being taken.

### **APPEAL OF THE HERITAGE COMMISSION'S DECISION**

Under RSA 674:44-a which allows local government to establish a Heritage Commission, any person or persons, jointly or severally aggrieved by a decision of the Heritage Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment.

### **EQUITABLE WAIVER**

Under RSA 674:33-a, the Zoning Board of Adjustment has the authority to grant an "equitable waiver" for a pre-existing violation of a dimensional requirement imposed by the Zoning Ordinance. (Effective 1/01/97). Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements and not from use restrictions. The applicant may choose the option of completing Part I or Part II as applicable.

#### **Part I:**

Upon application by and with the burden of proof on the property owner, the Board may find that:

A. The violation was not discovered by any owner, owner's agent or municipality official until after any structure that is in violation was substantially completed or until after a lot or other division of land in violation had been sold to an innocent buyer.

B. The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by error in applying the ordinance made by a municipal official who issued a permit that should not have issued.

C. The physical or dimensional violation does not constitute a public or private nuisance, does not diminish the value of other property in the area and does not interfere with any present or permissible future uses of other property.

D. Due to the investment made in ignorance of the violation, the cost of correcting it so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be correct

#### **Part II:**

In lieu of findings required by the Board under items (A) and (B), the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more.

## **BURDEN OF PROOF**

In order for an appeal to be granted, it is the responsibility of the applicant to satisfy each of the requirements set forth or to persuasively show why the appeal should be granted.

## ***ARTICLE VII - APPLICATIONS TO THE ZBA***

### **ACCEPTANCE OF APPLICATIONS**

The Zoning Board will not accept an application when the property is involved in litigation and the outcome of such litigation may materially affect the decision of the Board.

### **FEES FOR APPEAL**

"The Zoning Board of Adjustment may impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents and other matters that may be required by a particular application." Any such fees shall be subject to the provisions of RSA 673:16

### **FORMAL APPLICATION SUBMISSIONS**

- Building Department Permit Denial signed by Building Commissioner.
- **Completed** ZBA application form (Variance, Special Exception, Administrative Appeal or Equitable Waiver).
- Ten copies of the plot plan, as submitted to the Building Department, showing setbacks, parking, driveway, ROWs and accessory structures. (No Mylars) A certified plot plan may be required.\* \*Amended by the ZBA 7/20/00
- Ten copies of a floor plan, model or picture of proposal.
- A signed affidavit from the owner if you do not own the property.
- Ten copies of a sign diagram should one be proposed showing the overall height and location of the site.
- Application fee must be received before paperwork is processed, as per City Ordinance Section 28-2.
- The applicant could also submit any pertinent letters that would be helpful to the Board in making their decision.

- The applicant should sign and date the application along with the requested fee to the Building Department.
- The public hearing shall be held within 30 days of the receipt of properly completed application. (RSA 676:7).
- In the event that the Board of Adjustment approves the appeal, the owner/agent must make application to the Building Department for a permit in order to complete the process. Please wait two days after the hearing for the paperwork to be sent to the Building Department from the ZBA office.
- The footings of all new buildings and additions shall be certified by a NH Registered Land Surveyor and a copy of the survey submitted to the Building Department prior to commencing construction. (Per Building Code, Section 113.4)

### ***ARTICLE XIII - CONDITIONS***

In both the Variance and Special Exception, the ZBA may impose conditions or stipulations that must be adhered to by the present and subsequent owner(s).

If the applicant disputes these conditions, he/she may submit a written letter within 30 days, \* of said decision, to the department. (RSA 6747:4 effective 1/01/01) \*Amended by ZBA 4/09/01.

### ***ARTICLE IX - TABLED CASES***

Any case requiring additional information will be "Tabled" for 30 days. An applicant may request an extension of time but it is not to exceed 90 days from the public hearing. When a decision is made, thereafter, the applicant will receive notification of the decision by mail.

### ***ARTICLE X - NOTICE OF DECISIONS***

Notice of the Board's Decisions will be made available for public inspection within 72 hours (RSA 676:3). If the appeal is denied, the notice will include the reasons for denial. In all approved variance or special exception decisions, the applicant's copy is sent to the Building Department which will be given to the applicant when the building permit is secured.

### ***ARTICLE XI - EXPIRATION DATE***

The applicant whose variance or special exception has been granted, must obtain his/her building permit within one year \*, otherwise the variance will expire. It is suggested that they not start construction until 30 days after the decision, should the case come under appeal by an abutter or other

evidence arises. Any applicant/agent whose request also requires the approval of the Planning Board has one year to secure their permit. \*Amended by ZBA 4/09/01 to reflect new Z.O. adopted 2/07/01.

## ***ARTICLE XII- APPEALING THE BOARD'S DECISION***

When the Board denies a request, the applicant/agent may file for a rehearing by the Board within 30 days\* of said decision (RSA 677:2). The rehearing process allows the Board of Adjustment to reconsider their action before appeals are filed with the court. \*Amended by the ZBA 4/09/01 to reflect change in RSA.

Any aggrieved abutter or person affected by the Board's decision may request a rehearing. In order to re-file, the applicant must show cause as to why the case should be reheard.

If the request for rehearing is denied, the applicant/agent has 30 days to appeal to Superior Court (RSA 677:4).

If the request for rehearing is granted and the Board reaffirms their decision to deny the appeal, the applicant may take the appeal directly to Superior Court.

## ***ARTICLE XIII - SUBSEQUENT APPLICATIONS:***

If a property has had a previous variance or special exception denied by the ZBA, any new appeal for the same or a similar use or condition must be reviewed by the Board to warrant acceptance for public hearing. If granted, the case will be entered into the next public hearing agenda. If denied, the applicant may appeal the Board's decision within 30 days\*. This policy has been adopted to deter the same appeals from repeatedly coming to the Board without any new justification. (Subsequent Application adopted 4/16/91). \*Amended by ZBA 4/09/01 to reflect change in RSA 677:2.

Any new variance or special exception request that differs in nature, or is requested by a different owner/agent will be accepted for public hearing.\* \*Amended by ZBA 4/11/94.

## ***ARTICLE XIV - MEETINGS AND HEARINGS***

Public Hearings on appeals to the Board of Adjustment will normally be held in the Aldermanic Chambers, City Hall, One City Hall Plaza, on the first Wednesday of each month beginning at 7:00 PM (with exceptions).

Notice of Public Hearing shall be sent to the applicant and every abutter, shall be posted in two separate public places and shall be published in the newspaper (RSA 676:7). Also, notifications will be sent to the Aldermen and the Mayor. Notifications are issued at least 5 working days prior to the hearing.

Administrative meetings may be held on the call of the Chairman. Notice of date and time shall be sent to the Board Members and posted publicly in at least two separate public places within 24 hours of such meeting noting its agenda. RSA 673:10



The Board may meet in Executive Session in accordance with RSA 91-A:3 with revised statutes annotated.

## **BUSINESS MEETINGS**

### **ORDER OF BUSINESS**

- The Chairman calls the business meeting to order.
- Introductions of board members and staff.
- **Administrative Matters** - approval of minutes of previous business meeting and public hearing.
- **Regulatory Matters** - action by the board on tabled cases; request for rehearings and subsequent applications.
- **Other Business** - any correspondence or business matters that require board action.
- **Court Cases** - new cases, status on pending cases and recent ruling by Judge.
- **New Business** - any concerns or discussion by the board members.
- With no other business before the board, a motion will be made to adjourn the business meeting.

## **PUBLIC HEARINGS**

### **ORDER OF BUSINESS:**

- The Chairman calls the hearing to order.
- Introduction of board members and staff.
- Brief introduction of the ZBA's authority, its procedures and responsibility of the applicant/representative.
- Handouts distributed to those in attendance at hearing.
- Oath taken by those wishing to give testimony.
- All public hearings are recorded and each speaker is asked to identify himself/herself.
- The ZBA Clerk/Secretary will read the cases in the order that they are received in the department. The Chairman may make an exception when warranted. The Clerk will announce withdrawals prior to the reading of the first case.

- The applicant does not have to be present to have the case decided on.
- The Chairman calls the applicant/agent to come forward to make their presentation and asks if there is anything that they would like to add that was not previously given in the packet.
- Each board member is given the opportunity to ask questions.
- The Chairman will ask if there is anyone in favor or in opposition to the request.
- The applicant is allowed a rebuttal.
- The Chairman may limit testimony as deemed necessary.
- Each board member is given the opportunity to ask questions.
- The Chairman will call for a vote.

#### ***ARTICLE XV - AMENDMENTS:***

The rules of procedure may be amended by a majority vote of the full Board.

BY-LAWS AND RULES FOR THE TRANSACTION OF BUSINESS adopted April 26, 1993.  
Amendments to by-laws were made on 4/11/94, 7/20/00 and 4/09/01  
Manchester, NH Zoning Board of Adjustment

(Rev. 8/07/01)